

Special Proceedings Rules -- Criminal  
SPRC

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SPRC 1  
SCOPE OF RULES

(a) Except as otherwise stated, these rules apply to all stages of proceedings in criminal cases in which the death penalty has been or may be decreed. These rules do not apply in any case in which imposition of the death penalty is no longer possible.

(b) Except when inconsistent with these rules, the Superior Court Criminal Rules and the Rules of Appellate Procedure shall continue to apply in capital cases.

[Adopted effective December 30, 1997; amended effective January 1, 2003.]

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SPRC 2  
APPOINTMENT OF COUNSEL

At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.

A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active

trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.

At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel.

#### Comment

If the period of time for filing the death notice has passed, and the death notice has not been filed, the court may then reduce the number of attorneys to one to proceed with the murder trial.

[Adopted effective December 30, 1997; amended effective January 1, 2003.]

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### SPRC 3

#### COURT REPORTERS; FILING OF NOTES

(a) At the commencement of a capital case, the trial court will designate one or more court reporters for that case. To the extent practical, only designated reporters will report all hearings.

(b) As soon as possible after each hearing, the court reporter will transmit stenographic notes, any audio or video tapes, and any other electronic data medium containing notes of the hearing to the courtroom clerk.

(c) The courtroom clerk will index the notes on a records inventory, noting the date of the notes. The courtroom clerk will have the court reporter initial the inventory log as each set of notes is received by the courtroom clerk.

(d) The stenographic notes, any audio or video tapes, and any other electronic data medium containing notes of any hearing shall be stored by the clerk's office in an exhibit box labeled with the defendant's name and cause number to allow easy retrieval of notes. Sealed notes are to be marked "SEALED" in red ink and maintained in accordance with GR 15.

(e) Court reporter notes, any audio or video tapes, and any other electronic data medium containing notes of any hearing, sealed or unsealed, shall not be provided to anyone except the court reporter who produced the notes, unless a court order provides otherwise.

(f) A court reporter may withdraw the stenographic notes, any video or audio tapes, and any other electronic data medium containing notes of a hearing as required for transcription upon completing a request slip. The stenographic notes, any audio or video tapes, and any other electronic data medium containing notes shall be returned to the clerk's office at the same time the transcript is filed

for transmission to an appellate court.

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SPRC 4

DISCOVERY - SPECIAL SENTENCING PROCEEDING

Before the guilt phase of the trial begins, pursuant to a schedule set by the court, both parties shall provide discovery, pursuant to CrR 4.7(a) and (b) of evidence that they anticipate offering at the special sentencing proceeding. The trial court has discretion, in accordance with CrR 4.7(h) (4), to defer disclosure of all or part of the defendant's penalty phase evidence until the guilt phase has been completed. This discovery shall, if necessary, be supplemented pursuant to CrR 4.7(h) (2).

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SPRC 5

MENTAL EXAMINATION OF DEFENDANT

(a) If the defendant may offer at the special sentencing proceeding expert testimony concerning his or her mental condition, the defendant shall notify the prosecuting attorney at least 30 days prior to the start of jury selection. This time may be extended by the court for good cause.

(b) If the defendant has provided such notification, the court, on motion of the prosecuting attorney, shall enter an order requiring the defendant to submit to examination by one or more experts designated by the prosecuting attorney. The court shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. The defendant may have a representative present at the examination, who may observe the examination but not interfere with or otherwise obstruct the examination. Unless otherwise ordered by the court, the defendant or the defendant's representative may make an audio tape recording of the examination, which shall be made in an unobtrusive manner.

(c) By the date set by the court, the defendant or the defendant's attorney shall provide the State's experts with any reports generated by defense experts, all raw data relied on, and any test results. The information given to the experts shall be supplemented whenever new materials become available.

(d) If the State's expert believes that the material provided by the defendant is inadequate for a proper evaluation, the expert may request the court to require that further materials be provided. If the defendant fails to cooperate with the examination, the expert may request the court to require the defendant to answer specific questions or participate in specific tests. The court shall consider these requests at a closed hearing. The defendant and his or her attorneys shall be given an opportunity to be heard.

The prosecuting attorney shall not be allowed to participate. The record of the hearing shall be sealed as provided in subsection (f).

(e) On completing the examination, the prosecution expert shall submit a report setting out the tests performed and their results, the conclusions reached by the expert, and the basis for those conclusions. The report shall be provided to the defendant's attorney and filed with the court.

(f) The expert's report and materials connected with it shall be sealed. The expert shall not discuss his or her conclusions or any information connected with the examination with anyone, other than the defendant's attorneys or other experts whose participation is necessary for a proper examination. Any such experts shall be under the same restrictions.

(g) Within 24 hours after a jury returns a verdict finding a defendant guilty of aggravated murder in the first degree, the court will require the defendant to elect whether he or she may present expert testimony at the special sentencing proceeding concerning his or her mental condition. If the defendant elects not to present such testimony, the report shall remain permanently sealed, the restrictions set out in subsection (f) shall remain permanently in effect, and the State shall be permanently prohibited from direct or derivative use against the defendant of the report or of materials or information provided to the expert. If the defendant elects to present such testimony, the court shall provide a copy of the experts' reports to the prosecuting attorney and shall relieve the experts of the restrictions. The prosecuting attorney may use information obtained from the expert solely to rebut expert testimony offered by the defense at the special sentencing proceeding.

(h) If, in any subsequent proceeding related to the crimes for which the defendant was convicted, the defendant places his or her mental status in issue, the court may direct that relevant portions of the experts' reports be disclosed to the prosecuting attorney and that the experts shall discuss those portions with the prosecuting attorney.

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SPRC 6

PROPORTIONALITY QUESTIONNAIRES

(a) Within 14 days after the entry of a judgment and sentence convicting a defendant of aggravated first degree murder, the prosecuting attorney and the defendant's attorney shall each complete a proposed questionnaire in the form specified in RCW 10.95.120. The proposed questionnaires shall be filed with the clerk of the trial court. Copies shall be provided to the court and served on the opposing attorney.

(b) The court shall consider the proposed questionnaires and all other information in the record. No hearing shall be held unless the court so directs. Within 30 days after the entry of the judgment and sentence, the court shall complete a final questionnaire. The questionnaire shall be submitted to the clerk of the Supreme Court, to the defendant or his or her attorney, and to the

prosecuting attorney.

(c) Statements made by an attorney in a proposed questionnaire shall not be considered admissions. Statements made by the court in the final questionnaire shall not be considered findings of fact. The proposed questionnaires and the final questionnaire shall not be used by the parties or the courts for any purpose in connection with the case to which they pertain or any collateral proceeding involving the same defendant. They shall be used only in other cases, for the purpose of making the determination required by RCW 10.95.130(2).

(d) In any brief or memorandum, a questionnaire may be cited in the following format: first and last name of defendant, questionnaire number, county of conviction, year of sentencing. For example: "John Doe, no. 9 (Snohomish, 1982)."

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SPRC 7

#### DESTRUCTION OF RECORDS, EXHIBITS, AND STENOGRAPHIC NOTES

No records, exhibits, or stenographic notes shall be considered for destruction in a case in which the death penalty has been imposed while the defendant is still alive. Before destroying any records, exhibits, or notes in a capital case, the clerk will provide 60 days notice by certified mail, return receipt requested, to the prosecuting attorney, to the defendant's last known attorney of record, and to the defendant. To allow this notice, an attorney who represents the defendant in any challenge to the conviction should notify the clerk of the trial court of the fact of representation and the attorney's current address. Such notification does not constitute an appearance for any purpose other than receiving notice under this rule.

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